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JUL - 9 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of

State Forward-Looking Cost Studies
 For Universal Service Support

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CC Docket Nos. 96-45, 97-160
 DA 98-1055; APD 98-1

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC") hereby submits its Reply Comments in the captioned proceeding, regarding those comments filed in response to the model submitted by the Telecommunications Regulatory Board of Puerto Rico (the "Board"). PRTC specifically objects to the Association of Competitive Telecommunications Providers' (the "APCT")¹ improper efforts to enlist the Commission as an interpreter of state laws and to impose unjustified and arbitrary conditions on PRTC's receipt of federal universal service funding. However, PRTC continues to advocate the adoption of the PRTC proposal for insular areas, in lieu of the proxy model methodology, at least until 2001, and incorporates its proposal herein by reference.² Disputes over the appropriate input values demonstrate that no proxy model is currently appropriate for Puerto Rico, particularly because the potential swing between federal universal support for Puerto Rico ranges from current amounts to a net of zero.

¹ Celpage, a member of APCT, has submitted comments almost identical in substance to the comments submitted by its association. PRTC will address separately the Celpage pleading only to the extent that it is not repetitive of the APCT comments.

² See Proposal of PRTC, CC Docket Nos. 96-45, 97-160, DA 98-715 (USF Proposal) (filed April 27, 1998); PRTC Comments (filed May 15, 1998); PRTC Reply Comments (filed May 29, 1998).

PRTC's concern regarding the proxy model methodology is understandable, given that application of either the HAI model or the BCPM will result in considerable reductions in or elimination of federal universal service support for Puerto Rico. Similarly, assuming a 25 percent ceiling on the federal contribution, the Board's model would reduce federal support for Puerto Rico from an estimated \$145.5 million for 1998³ to \$47.5 million, or almost one-third of the current amount. The result would be higher rates to local customers, contrary to the express goals of universal service.

I. THE APCT IMPROPERLY SEEKS FCC ENFORCEMENT OF PUERTO RICO LAWS

A primary claim of the APCT (and its member Celpage) is that the Board submitted to the Commission a Puerto Rico-specific universal service model without first complying with the requirements of Puerto Rico laws and rulemaking regulations.⁴ As a federal agency, the Commission should not consider the merits of such state law claims. If the APCT believes that the Board did not follow appropriate Puerto Rico procedures, to the extent they may apply in developing and submitting its Puerto Rico-specific model, then the APCT should raise these claims with the Board or any other Puerto Rico forum having jurisdiction. Such possible fora, however, do not include the FCC.

³ PRTC wishes to correct Celpage's report of PRTC's universals service receipts. PRTC may receive approximately \$145.5 million in universal support for this year, based on USAC projections for 1998 and as reported by PRTC. See Ex parte letter to Magalie Roman Salas from Tina Pidgeon, CC Docket No. 96-45 (dated May 21, 1998). Contrary to Celpage's claim (at 203 n.1), this amount was not received in 1997.

⁴ APCT at 4-5; Celpage at 5-6.

Notwithstanding the fact that individual members of the APCT sought to have the Commission preempt the Puerto Rico Telecommunications Act of 1996 (the "Act") not long after its passage (Celpage and Cellular Communications of Puerto Rico), these parties now implore the FCC to enforce the same statute. As in the prior proceeding, these parties have presented the Commission with a claim that it cannot resolve. In the preemption proceeding, these parties raised issues that were not ripe for Commission action; in the instant proceeding, however, the requested action is not merely premature, but it is beyond the FCC's jurisdiction. A federal agency simply has no authority to enforce, implement, or interpret state law.⁵ On this basis, the Commission must decline to review the merits of this APCT claim. Similarly, Celpage's demand that the FCC order the Board "to withdraw its proposed cost study, and initiate a lawful public comment proceeding, before adopting any new revised cost study for Puerto Rico"⁶ evidences a flagrant disregard for the appropriate jurisdictions of both the Commission and the Board, and must be denied.

II. THE COMMISSION SHOULD REJECT SUPERFLUOUS CONDITIONS UPON PUERTO RICO UNIVERSAL SERVICE SUPPORT

The APCT claims that the Commission should impose conditions on PRTC in adopting any cost model for Puerto Rico. The APCT demands that the Commission "[e]liminate cross-subsidies and other anticompetitive actions," ensure that PRTC's rates and charges "become cost-based," and "order PRTC to submit quarterly reports on the progress of its pro-competitive

⁵ See Pennhurst State School and Hospital v. Halderman, 465 U.S. 89 (1984).

⁶ Celpage at 6.

and streamlining efforts.”⁷ Celpage requests additional conditions upon the adoption of the PRTC USF proposal, including the creation of a separate subsidiary for PRTC’s competitive services, the availability of all PRTC’s books and accounts for public scrutiny, and the establishment of a “date certain” for termination of any waiver from immediate transition to the proxy model methodology.⁸ As PRTC explained in response to the initial proposal for these extraordinary conditions,⁹ these unprecedented conditions would impose additional and unnecessary regulation on PRTC, which is already well-regulated by both the FCC and the Board.

APCT fails to support its allegations of cross-subsidies and unnamed other anti-competitive actions, because it cannot. The Board has certified PRTC as an eligible telecommunications carrier, as required by Section 214(e)(2) of the Communications Act and the Commission’s rules.¹⁰ Thus, PRTC has met and will continue to meet the requirements for any carrier to receive universal service support. In fact, the USF administrator and the FCC has had access to the relevant cost information every time PRTC has received universal service support, and the company’s USF receipts have never been challenged.

⁷ APCT at 6.

⁸ Celpage at 9-10.

⁹ PRTC Reply Comments, CC Docket Nos. 96-45, 97-10, DA 98-715 (filed May 29, 1998) at 4-7.

¹⁰ 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201.

APCT's claim that it does not have access to PRTC cost information also is unfounded.¹¹ PRTC continues to record its expenses and revenues according to the Commission's Uniform System of Accounts set forth in Part 32, to separate its costs between regulated and non-regulated services according to Parts 36 and 64, and to file annual ARMIS reports. Although Celpage blindly calls for access to "all [PRTC's] books and accounts," it already has access to volumes of PRTC cost information. If any of the APCT companies wished to study PRTC's costs, the information is available for them to do so, because PRTC already provides ample, publicly-available information to demonstrate that its rates and charges are appropriate. In fact, its 1998 annual access tariff filing recently went into effect without investigation.¹² PRTC notes that despite their unsupported allegations regarding "cross-subsides and other anti-competitive actions," none of the APCT members challenged PRTC's access rates.¹³

In addition, APCT's claim that "even the [Board] does not place any trust in the numbers and information submitted to it by PRTC" (at 5) is pure conjecture. The Board's understandable misgivings about the submission of the model when the Commission still has before it unresolved issues regarding the methodology and the timing for implementation are wholly unrelated to any expressed or implied Board opinion about PRTC's costs. Finally, APCT's

¹¹ The same is true for parties' claims that the Board used proprietary PRTC information to develop the inputs. To the best of PRTC's knowledge, the Board used publicly available data to develop its Puerto Rico-specific model inputs.

¹² See 1998 Annual Access Tariff Filings, CC Docket No. 98-104, Memorandum Opinion and Order, DA 98-1294 (rel. June 29, 1998).

¹³ AT&T Corp., the parent company of AT&T of Puerto Rico, Inc., filed a petition against PRTC's tariff, inter alia, but the Commission determined that no investigation was warranted. Id.

request for ill-defined reports on the progress of PRTC's "pro-competitive and streamlining efforts" seek to inject the Commission unlawfully into the regulation of intra-island services. Moreover, PRTC already provides ample information for oversight, in accordance with Commission rules.

The Commission also should reject the additional Celpage conditions. PRTC's USF proposal already addresses Celpage's request for a "date certain" for Puerto Rico's transition to a proxy model methodology. The proposal is consistent with the Commission's decision regarding the treatment of rural carriers, such that insular carriers will be provided the same transition schedule as is developed for rural carriers. Thus, the "date certain" will be when the Commission can ensure that the model accurately predicts the cost of providing the service to the area. Finally, Celpage's demand that the Commissioner require PRTC to establish a competitive subsidiary is superfluous. Celpage fails even to acknowledge that the Commission required carriers to establish a separate subsidiary for competitive services, effective February 11, 1998.¹⁴ PRTC has been granted a temporary waiver of the revised CMRS safeguard requirements, based on a pending IRS tax ruling,¹⁵ and expects to comply with the requirement in accordance with the Commission's rules and the IRS tax ruling, once issued.

¹⁴ See Amendment to the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Report and Order, 12 FCC Rcd 15668 (1997).

¹⁵ See Puerto Rico Telephone Company: Request for Temporary Waiver of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96-162, Order, DA 98-1105 (rel. June 10, 1998) ("we expect that PRTC will receive the guidance it seeks from the IRS shortly, and thus, we do not contemplate granting any further extensions to PRTC").

III. THE COMMISSION SHOULD REJECT PROPOSALS FOR ARBITRARY RATE OF RETURN AND LOCAL CALLING AREA ADJUSTMENTS

APCT and Centennial Cellular Corp. ("Centennial") raise specific objections to some of the Board's model inputs for Puerto Rico. As PRTC has stated, it prefers the adoption of its USF proposal instead of a proxy model methodology, because no model has been shown to predict reliably the cost of providing service in Puerto Rico. Such a result would be contrary to the Commission's pledge that "no state should receive less federal high cost assistance than it currently receives."¹⁶ Thus, PRTC does not address here the comments regarding the efficacy of the BCPM itself or the Board's inputs.¹⁷ However, PRTC does object to the APCT claim that PRTC's rate of return should be held below the level of every other rate of return regulated carrier and to the Centennial claim that PRTC's local calling area structure is improper. These claims in particular demonstrate that for at least some of the commenters, the main objective in participating in this federal universal service proceeding is to reopen settled issues or to seek improperly Commission resolution of local service issues.

For example, on behalf of APCT, Dr. Kelley argues that PRTC's rate of return should be reduced from 11.25 percent, the federal rate for all rate of return carriers, to at least half that amount.¹⁸ According to Dr. Kelley, PRTC's rate of return must be reduced because it is a government entity. In essence, because the Government of Puerto Rico is the shareholder of the

¹⁶ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, FCC 98-67 (rel. April 10, 1998) at ¶ 197.

¹⁷ AT&T (at 12-17), MCI (at 4-36), and Sprint (at 4-5) each addressed these model-specific issues. See also APCT, Kelley Declaration at 3-9; Centennial at 5-7.

¹⁸ APCT, Kelley Declaration at 8.

company, APCT argues that the Government should not receive a return on its equity. This absurd claim was squarely rejected in an arbitration proceeding initiated by one of APCT's members, Cellular Communications of Puerto Rico, Inc. ("CCPR"), which now seeks to resurrect the argument before a different forum. However, this claim has no support in the Commission's USF model requirements.

The Commission expressly stated that "the rate of return must be either the authorized federal rate of return on interstate services, currently 11.25 percent, or the state's prescribed rate of return for intrastate services."¹⁹ The Board's use of an 11.25 percent rate of the return is appropriate, particularly considering that there is no other state prescribed rate of return for intrastate services. It is the APCT-advocated proposal that would be inconsistent with the Commission's requirements. No basis exists for adjusting arbitrarily and exclusively PRTC's allowable rate of return, either in the universal service context or in any other context.

Centennial's claims regarding PRTC's local calling areas are both irrelevant and erroneous. Centennial argues that the local/toll split used by the Board should be arbitrarily adjusted because "the entire island of Puerto Rico" is really a single local calling area.²⁰ Centennial "believes that classifying an excessive proportion of calls as 'toll' will artificially increase the amount of universal service support to which PRTC would be entitled"²¹ and proposes to treat all intra-island calls as local, or at least use the original default value of 81

¹⁹ Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776, 8913 (¶ 250(4)) (1997), appeals pending, No. 97-60421, et al. (5th Cir.).

²⁰ Centennial at 2, 3.

²¹ Id. at 4 n.5.

percent. However, use of the default input in lieu of the Board-developed value as suggested by Centennial -- a designated eligible telecommunications carrier that expects to receive universal service funding -- would increase the output of the Board's model by \$4.9 million.

Centennial's proclaimed quest for the "rapid elimination of unfair subsidies to PRTC" is apparently an excuse for advancing its specious and irrelevant claims about the Puerto Rico local calling areas. Not only are local calling areas a matter of local jurisdiction,²² but in fact, Centennial's arguments do not support its claim. According to Centennial, PRTC's network design requires the finding that Puerto Rico is one local calling area because the placement of PRTC's tandem switches "do not represent any logical division of the island into two 'LATAs' or local calling areas."²³ Centennial's confusion of LATAs (Puerto Rico is entirely within one LATA) and local calling areas fails to identify any addressable issue with PRTC's long-established local calling areas. In addition, dialing patterns in Puerto Rico or elsewhere are not themselves indicative of whether a call is local or toll.²⁴ At bottom, PRTC knows of no other instance in which the existing and long-standing local calling area structure of a company has been subject to the Commission's review because of a competitor's claim that those local calling

²² Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 16013 (¶ 1035) (1996), rev'd in part and aff'd in part sub nom. Iowa Utils. Bd. v. F.C.C., 120 F.3d 753 (8th Cir. 1997), pets. for cert. granted, 66 U.S.L.W. 3490 (U.S. January 27, 1998) (No. 97-826, et al.).

²³ Centennial at 4.

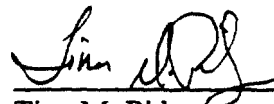
²⁴ It is not likely that Centennial would suggest that all customer calls between Northern Virginia and the District of Columbia should be toll calls because customers have to dial ten-digits to place those calls. Similarly, all calls within Puerto Rico are not necessarily local simply because the availability of number resources permit direct-dialing on an island-wide basis.

areas are somehow not valid. The Commission should not undertake to do so now in its universal service proceeding.

IV. CONCLUSION

For the foregoing reasons, PRTC respectfully requests that the Commission adopt the PRTC USF proposal for insular areas, without the imposition of the unprecedented and unwarranted conditions requested by APCT and Celpage. In addition, the Commission should decline to consider any of the state law claims raised by the parties. Finally, commenters have provided no basis to adjust arbitrarily PRTC's allowable rate of return or its local calling areas for universal service purposes, and the Commission should reject all such requests.

Respectfully submitted,



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Dated: July 9, 1998

CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that copies of the foregoing Reply Comments of the Puerto Rico Telephone Company were served by hand-delivery and first-class mail, postage pre-paid, as indicated, this 9th day of July, 1998, to the following:

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